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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Petitioner,

v.

LARRY WOLLERSHEIM,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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Question Presented

Where

i. a former member secures a judgment against his Church for thirty million dollars, including twenty-five million dollars as punitive damages, for purported emotional distress arising out of his voluntary participation in the Church's religious practices;

ii. the Church appeals that judgment; and

iii. California law ordinarily requires as a condition of a stay of execution of judgment pending appeal that the Church post a cash bond of sixty million dollars or a surety bond of forty-five million dollars, both of which are many times the Church's assets and would force it into bankruptcy and dissolution

did the refusal of the California Court of Appeal to stay execution or substantially to reduce the amount of the bond violate the petitioner Church's rights under the Religion Clauses of the First Amendment, and to Due Process and Equal Protection under the Fourteenth Amendment?

Parties to the Proceedings Below and Rule 28.1 List

The parties to the proceedings below were:

The Church of Scientology of California
Larry Wollersheim.

Petitioner Church of Scientology of California has no parent companies, subsidiaries or affiliates to list pursuant to Rule 28.1.

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The Church of Scientology of California petitions for a writ of certiorari to review the order of the Court of Appeal of the State of California, Second Appellate District, in this case.

Opinions Below

The Court of Appeal of the State of California, Second Appellate District, entered an order without an opinion on October 1, 1986, denying a petition for a writ of supersedeas (App. F, *infra*, 9a).[1]

[1] The Court of Appeal of the State of California, Second Appellate District, which denied the petition for a writ of supersedeas, appears to be the highest court which decided the issue before this Court on the merits. Should this Court decide that the order of the Court of Appeal was an act of discretion, it is respectfully requested that the petition be deemed addressed to the trial court, the Superior Court of California, County of Los Angeles.

In denying a petition for review, the Supreme Court of California issued no opinion. Its unreported order of October 6, 1986 contained a dissenting opinion (App. D, *infra,* 7a). The same court's prior order of October 3, 1986 briefly continuing a lower court stay of execution (App. E, *infra,* 8a) is also unreported.

The Superior Court of California, County of Los Angeles, the trial court, made pre-trial rulings, also not reported, that Scientology is a *bona fide* religion entitled to First Amendment protection (App. J, *infra,* 8a, App. K, *infra* 20a) and that the ritual of auditing is a central practice of the religion (App. J, *infra,* 18a). On August 4, 1986, it granted a brief stay of execution in an unreported order (App. H, *infra,* 12a). On September 18, 1986, it denied petitioner's motions for judgment notwithstanding the verdict and for a new trial in an unreported order. On September 26, 1986, it orally denied petitioner's motion to waive the bond necessary to stay execution of the judgment on grounds of lack of power. It also orally denied petitioner's motion to extend the stay of execution.

Jurisdiction

The order of the Supreme Court of California (App. D, *infra,* 7a) was entered on October 6, 1986. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

Constitutional and Statutory Provisions Involved

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

> thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Code of Civil Procedure §§ 902, 904.1, 917.1 and 923 (West 1980 and Supp. 1986) are reproduced in their entirety in Appendix A to this Petition.

Statement of the Case

The central issue in this case is whether the application of California's bonding requirement for a stay of enforcement of a judgment pending appeal which would financially destroy the petitioner Church and thereby render meaningless its right to appeal from an unconstitutional and otherwise unlawful 30 million dollar judgment violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Thus, it presents many of the same issues which this Court has already deemed worthy of its plenary review in *Pennzoil, Co.* v. *Texaco, Inc., prob. juris. noted,* —— U.S. ——, 106 S.Ct. 3270 (1986), *see infra,* p. 11. Additionally, the issues in this case are even more critical than those in *Texaco* precisely because the underlying judgment rests entirely on the peaceful and voluntary religious practices of the Church, and the resulting imminent destruction of the Church in turn would destroy the religious free exercise rights of its members. The arbitrary denial of its right to appeal from such an uncon-

stitutional judgment by reason of the application of the bonding requirement thus also raises substantial questions under the Religion Clauses of the First Amendment.

The respondent, a former member of the Church of Scientology of California, sued it for the infliction of "emotional distress" and fraud arising primarily from his participation in the Church's central religious practice of auditing.[2] The trial court held that Scientology is a *bona fide* religion entitled to First Amendment protection and that auditing is its central religious practice (App. J, *infra*, 18a-19a).

At the conclusion of the respondent's case, the trial court dismissed his two claims that the Church fraudulently misrepresented the benefits of participation in auditing and failed to disclose the alleged dangerous nature of auditing. Consequently, the only issues for the jury were respondent's two claims for infliction of emotional distress arising primarily from the respondent's voluntary participation in the Church's religious practice of auditing.[3]

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[2] Auditing constitutes the most substantial and important part of every Scientologist's path of spiritual progress. Ordained Church ministers are typically called "auditors" by Church members (literally, "one who listens"). They fulfill roles comparable to those of ministers, rabbis and priests in other religions. In Scientology, an auditor aids a parishioner through individual counselling, assisting him to confront and acknowledge past harmful acts or events in this or previous lifetimes to overcome the effects of those events on the parishioner as a spiritual being. The practice is akin to the confessional of Catholicism and other religions. However, unlike other faiths, spiritual counseling constitutes the central practice of the Scientology religion. In fact, according to the tenets of Scientology, auditing is the sole route to spiritual salvation.

[3] Respondent's cause of action for intentional infliction of emotional distress also asserted that the Church allegedly urged him to sever his ties with friends and family, allegedly had improperly disclosed information revealed in auditing sessions, and allegedly

(footnote continued on following page)

The jury rendered a verdict of five million dollars compensatory damages with no distinction between respondent's claim of intentional infliction of emotional distress (the third cause of action) and respondent's claim of negligent infliction of emotional distress (the fourth cause of action (App. I, *infra,* 16a). The jury awarded twenty-five million dollars as punitive damages on the third cause of action (*Id.*). Judgment was entered on July 22, 1986 (App. I, *infra,* 17a).

California Code of Civil Procedure § 917.1 requires that in order to stay enforcement of the judgment pending appeal, a party must post an undertaking of twice the amount of the judgment, as applied here sixty million dollars, or one and one-half times the amount of the judgment if the undertaking is by an admitted surety insurer (App. A, *infra,* 2a-3a). As applied here, the latter provision requires a forty-five million dollar bond.

On August 4, 1986, the trial court stayed the enforcement of the judgment until October 3, 1986, pursuant to Cal. Civ. Proc. Code § 918 (West Supp. 1986)[4] and provided in its order "that the assets reflected" in a particular financial statement "will not be disbursed . . . except in the ordinary course of business" (App. H, *infra,* 12a).

(footnote continued from previous page)

had destroyed his business by urging his Scientology employees and customers to boycott his business. It is clear, however, and was acknowledged by respondent's counsel and the trial court, that auditing is the central issue and that the damage award can be supported only by the claim concerning auditing, if it can be supported at all.

[4] Section 918 authorizes the trial court to stay enforcement of any judgment, but where, as in this case, enforcement would be stayed on appeal only by the posting of an undertaking, limits the duration of such a stay to not longer than ten days beyond the last date on which a notice of appeal could be filed without the consent of the adverse party.

The trial court further provided for its prior approval of certain expenditures relating to other litigation (App. H, *infra,* 12a-13a).

Subsequently, on September 26, 1986, the trial court denied petitioner's motion pursuant to Cal. Civ. Proc. Code § 995.240 (West Supp. 1986) to waive the statutory requirements to stay execution pending appeal on the ground of lack of power and denied petitioner's motion to extend the stay of execution of judgment. Petitioner had established that its net worth on September 15, 1986 was just over thirteen million dollars of which approximately five million dollars was unpledged and available to secure an undertaking on appeal.[5] Hence, it was financially impossible for petitioner to post a bond of 60 million dollars. Petitioner also showed that it was impossible for it to obtain a surety bond for 45 million dollars because no surety company would make such an undertaking without petitioner's posting at least one hundred percent collateral.[6]

Petitioner filed its notice of appeal to the California Court of Appeal, Second Appellate District, on September 29, 1986 (App. G, *infra,* 10a). Petitioner then sought relief from the bonding requirements by filing a Petition

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[5] The financial statement submitted to the trial court was attached as Appendix G to petitioner's application to Circuit Justice O'Connor for a stay. Appendix G to Application for Stay of Execution of State Court Judgment Pending Consideration of Petition for Writ of Certiorari, or in the Alternative, Pending Appeal of State Court Judgment and Ultimate Petition for Writ of Certiorari, *Church of Scientology of California* v. *Wollersheim,* No. A-271.

[6] *See* Supplemental Declaration of Lynn Farney dated September 26, 1986, which was lodged with this Court on October 14, 1986 pursuant to the Circuit Justice's request as Tab 3 to the Appendix to the Petition for Writ of Supersedeas or Other Appropriate Stay Order in the California Court of Appeal, Second Appellate District.

for Writ of Supersedeas or Other Appropriate Stay Order in that court pursuant to Cal. Civ. Proc. Code § 923[7] (West 1980) which was denied without explanation on October 1, 1986 (App. F, *infra,* 9a). In its petition, petitioner had asserted its entitlement to a writ staying enforcement or reducing the undertaking under California law, under the First Amendment and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

On October 2, 1986, petitioner filed a petition for review and request for immediate stay of execution with the Supreme Court of California, seeking review of the denial by the Court of Appeal. On October 3, 1986, the Supreme Court of California continued the stay ordered on August 4, 1986 by the Superior Court pending final determination of the petition for review (App. E, *infra,* 8a). The Supreme Court of California denied review and a stay on October 6, 1986, giving no reason or explanation (App. D, *infra,* 7a). Two Justices (Mosk, J. and Grodin, J.) dissented stating "that the petition for stay should be granted as to punitive damages only." (*Id.*)

Subsequent to the action of the California Supreme Court, petitioner filed with Associate Justice Sandra Day O'Connor, Circuit Justice for the Ninth Circuit, an application for a stay pending consideration of a writ of certiorari to be filed in this Court or pending appeal of the state court judgment and ultimately, if necessary, a petition in this Court for a writ of certiorari. *Church of Scien-*

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[7] Under Cal. Civ. Proc. Code § 923, supersedeas lies to stay execution of judgment without statutory undertaking when (a) an appellant will otherwise suffer irreparable injury and a stay is necessary to preserve the issues on appeal; (b) an appellant has a meritorious appeal; and (c) respondent will not be unduly prejudiced by the relief granted. *See e.g., Davis* v. *Custom Component Switches, Inc.*, 13 Cal. App.3d 21, 27-28, 91 Cal.Rptr. 181 (2d Dist. 1970) *cert. denied*, 409 U.S. 1077 (1972).

tology of California v. *Wollersheim*, No. A-271. The Circuit Justice granted a temporary stay on October 8, 1986, continuing in effect the trial court's supervisory order over the petitioner's assets (App. C, *infra*, 6a). Subsequently, the Circuit Justice referred the stay application to the full Court and on November 3, 1986 the Court granted the stay and continued the Circuit Justice's order of October 8, 1986 pending the timely filing and disposition of a petition for certiorari (App. B, *infra*, 5a).[8]

Reasons for Granting the Writ

1. The orders of the California Court of Appeals and of the Supreme Court of California denying petitioner a stay of execution of judgment or a meaningful reduction in the bonding requirement necessary to stay execution are in direct conflict with principles established by this Court holding that once a state creates a right to an appeal, it may not condition that right upon the ability of an appellant to meet financial or fee requirements. *Evitts* v. *Lucey*, 469 U.S. 387, 393-94 (1985); *Griffin* v. *Illinois*, 351 U.S. 12, 17-20 (1956).

The denial of a stay or of a meaningful reduction of bond by California's appellate courts does precisely what these cases prohibit: petitioner's right to an appeal is rendered meaningless for it cannot meet the requirements for a stay pending appeal. Before it is able to obtain an adjudication of the merits of its appeal, it will be forced

[8] In the stay application, petitioner represented that it was prepared, if absolutely necessary, to post a cash bond of 5.1 million dollars, that being the total net unpledged assets of the Church. Such a bond would provide full security for the compensatory portion of the judgment. Petitioner stands ready to post such a bond if deemed necessary by the Court.

into bankruptcy and perhaps dissolution. At that point, a decision on its appeal[9] will be meaningless for petitioner will no longer exist.

California has granted petitioner a right to appeal, Cal. Civ. Proc. Code §§ 902, 904.1 (West 1980, Supp. 1986), and it is beyond debate under this Court's decisions that this right of appeal, like other state-granted entitlements cannot "be withdrawn without consideration of applicable due process norms." *Evitts* v. *Lucey, supra,* 469 U.S. at 400-01. *Accord, Williams* v. *Oklahoma City,* 395 U.S. 458, 459-60 (1969); *Griffin* v. *Illinois,* 351 U.S. 12, 17-20 (1956). *See also Logan* v. *Zimmerman Brush Co.,* 455 U.S. 422, 429-30 (1982).

Having created this right to appeal, California must afford petitioner, like every other litigant, "a fair opportunity to obtain an adjudication on the merits of his appeal." *Evitts, supra,* 469 U.S. at 405. It may not deprive petitioner of this fair opportunity by reducing the appeal to a "'meaningless ritual' by denying [petitioner] the means effectively to press [its] appellate arguments. . . ." *Texaco, Inc.* v. *Pennzoil Co.,* 784 F.2d 1133, 1154 (2nd Cir. 1986), *prob. juris.* noted, —— U.S. ——, 106 S.Ct. 3270 (1986), quoting *Douglas* v. *California,* 372 U.S. 353, 358 (1963). As the Court of Appeals for the Second Circuit aptly recognized in the *Texaco* case concerning a nearly identical issue, the right to a meaningful appeal cannot be rendered illusory by the application of substantial bonding requirements which an appellant cannot meet:

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[9] Petitioner is expeditiously pursuing its appeal on the merits in the California state courts and expects to file its appellate brief in early January, 1987. Copies of the brief on the state court appeal will be lodged in this Court shortly thereafter.

> It is self-evident that an appeal would be futile if, by the time the appellate court considered his case, the appeal had by application of a bonding law been robbed of any effectiveness. *Cf. National Socialist Party* v. *Skokie,* 432 U.S. 43, 44 . . . (1977); *Nebraska Press Ass'n.* v. *Stuart,* 423 U.S. 1319, 1324-25 . . . (1975) (Blackman, J., in chambers); *Times-Picayune Pub. Corp.* v. *Schulingkamp,* 419 U.S. 1301, 1305 . . . (1974) (Powell, J., in chambers); *Graves* v. *Barnes,* 405 U.S. 1201, 1203 . . . (1972) (Powell, J., in chambers).

784 F.2d at 1154.

Accordingly, the Court of Appeals in *Texaco* approved federal court intervention in a pending state civil proceeding to stay execution of a judgment where the state bonding requirements effectively would have rendered meaningless an appeal from that judgment:

> The undisputed facts indicate that the automatic enforcement of the Texas lien and bond requirements against Texaco's property to the extent of $12 billion lacks any rational basis, since it would destroy Texaco and render its right to appeal in Texas an exercise in futility. This would at least amount to a deprivation of its property in violation of its right to due process under the Constitution.

Texaco, supra, 784 F.2d at 1145.[10]

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[10] In the *Texaco* case, the State of California submitted a brief *amicus curiae* to the Second Circuit supporting the granting of injunctive relief to protect the right of appeal. Most significantly, the brief, written by California's Attorney General, states:

> It is well established that while a state is not required to provide any right of appeal . . ., once such a right is provided it may not be conditioned in a discriminatory or arbitrary manner. . . .

(footnote continued on following page)

This Court has noted probable jurisdiction over the *Texaco* case, *Pennzoil Co.* v. *Texaco, Inc.*, —— U.S. ——, 106 S.Ct. 3270 (1986), and will hear oral argument this Term. The *Texaco* case, of course, is complicated by substantial issues of federal jurisdiction and comity which are not present here.[11] It is significant, however, that the *Texaco* case involves the same underlying due process and equal protection questions which are posed here, *see* Jurisdictional Statement at 23-26, *Pennzoil Co.* v. *Texaco, Inc.*, No. 85-1798, and this Court's grant of probable jurisdiction did not restrict the issues. Thus, this Court will consider in the *Texaco* case this Term the very issues petitioner raised in the California state courts, and is raising in this petition for certiorari. *See* Brief for Appellant in the *Texaco* case, at 45-50.[12]

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> [T]he court is confronted with a statute whose application in this unprecedented case works a fundamental injustice. The unique characteristics of this case are . . . (3) substantial questions regarding whether the full amount of the judgment of the trial court will be sustained on appeal; and (4) a state law which if fully applied would foreclose an appeal or cause bankruptcy of the corporation. Under these circumstances, amicus suggests that basic notions of fairness favor mitigating operation of the bond-posting requirement in this instance.

Brief of Amicus Curiae State of California, Acting By and Through Its Business, Transportation and Housing Agency in Support of Respondents at 3-4, *Texaco, Inc.* v. *Pennzoil Co.*, *supra*, 784 F.2d 1133.

[11] We note that the course followed by petitioner here, *i.e.*, the exhaustion of state remedies followed by review in this Court, is precisely that asserted by appellant Pennzoil Company in this Court to be the proper course. *See* Brief of Appellant at 9-10, 36-37 in *Pennzoil Company* v. *Texaco, Inc.*, No. 85-1798.

[12] The Court may wish to defer ruling on this petition for certiorari until after the *Texaco* case is decided. This case, however, presents a stronger case for review than *Texaco* in that it presents a double bond requirement, no concerns of federalism and comity, and a direct threat to First Amendment rights.

While this case presents much the same legal issues as *Texaco,* there are two distinguishing facts which make the denial of a stay of execution here more arbitrary and irrational. First, *Texaco,* at least in theory if not in practical effect, had an adequate net worth to meet the bonding requirement, 784 F.2d at 1155, whereas here the required surety bond is 3½ times petitioner's net worth and the required cash bond is approximately 4½ times petitioner's net worth.[13] Second, the California bonding scheme requires either a cash bond of *twice* the judgment or a surety bond of one and one-half the judgment in contrast to the Texas scheme which requires a bond in at least the full amount of the judgment. *See* 784 F.2d at 1138.

A result similar to that in *Texaco* was reached several years earlier by the Fifth Circuit in *Henry* v. *First National Bank of Clarksdale,* 595 F.2d 291 (5th Cir. 1979) *cert. denied,* 444 U.S. 1074 (1980). In that case, the NAACP sought federal court injunctive relief against a Mississippi bonding requirement that effectively would have prevented the NAACP from prosecuting an appeal from a Mississippi state court judgment for damages and injunctive relief. Either posting the required bond of 125% of the judgment or execution of the $1.25 million judgment would have effectively bankrupted the NAACP bringing all of its activities "to an immediate and indefinite halt" and "would have entailed the virtual disappearance of the NAACP as a functional entity" 595 F.2d at 305. The Court of Appeals for the Fifth Circuit upheld the district court's injunction not only to preserve the NAACP's due process right to pursue its appeal, but also to prevent irreparable

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[13] Relative to petitioner's unpledged assets of approximately 5 million dollars, the required surety bond is approximately 9 times its unpledged assets and the required cash bond is approximately 12 times its unpledged assets.

harm to the organization's rights of speech and association which were threatened by the pending judgment and threatened execution.

Petitioner's plight is at least as compelling as that of the NAACP in *Henry*. First, the First Amendment religious freedoms at stake here are as important as the First Amendment rights to political speech and association which concerned the Fifth Circuit in *Henry, supra,* 595 F.2d at 303-05. Second, as the district court in *Henry* recognized, it was possible for the NAACP to obtain a supersedeas bond, although to do so it would have been required to borrow substantial funds and to deplete funds necessary for its normal functions. *Henry* v. *First National Bank of Clarksdale,* 424 F.Supp. 633, 638-39 (N.D. Miss. 1976). Here, in the absence of some meaningful relief from the bonding requirements, petitioner will cease to exist. The bonding requirements cannot be met and execution against petitioner's assets will force it into bankruptcy and dissolution.

The denials of a stay and of a meaningful reduction of the bond requirement in this case stand in stark contrast to the decisions of this Court and of the United States Courts of Appeals for the Second and Fifth Circuit in *Texaco* and *Henry*. Those decisions reflect and mandate a realistic and sensitive assessment of the practical effect of barriers to a meaningful appeal under the Due Process Clause of the Fourteenth Amendment. The unexplained and indeed inexplicable adherence to the California statutory requirements requiring either a sixty million dollar or forty-five million dollar bond where petitioner has a net worth of only 13 million dollars, of which only 5 million dollars is unpledged, erects an insurmountable barrier to a meaningful appeal.

The effect of the deprivation which will occur here is all the more serious because it is a Church which will be severely crippled or destroyed by a judgment of questionable constitutionality and the award of massive damages, including twenty-five million dollars in punitive damages, for a former member's voluntary participation in peaceful religious practices. If petitioner can be crippled or destroyed before it has a fair opportunity for a meaningful appeal, all Scientology churches in particular and indeed all other churches, but especially those which adhere to minority religious views, will be chilled from carrying out their essential religious functions: the proselytizing of their religions and the offering of their religious practices.

2. The arbitrary and irrational nature of this insurmountable barrier, and the Due Process violation here, is exacerbated because sensitive and important issues are to be appealed.[14] Respondent, a former member of the petitioner Church, invoked the aid of a civil tribunal to recover damages for wrongs allegedly committed by his Church in the course of its central religious practice of auditing. Numerous decisions of this Court have recognized that lawsuits such as the underlying action which seek to resolve in civil courts disputes between churches and their members over religious practices are not justiciable. *See Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952); *United States* v. *Ballard*, 322 U.S. 78, 87 (1944); *Prince* v. *Massachusetts*,

[14] By emphasizing the substantial federal constitutional issues at stake here, petitioner does not mean to understate the substantial state law reasons which require reversal. For example, the damage award should be reversed because there was an insufficient showing to even submit the case to a jury and the amount is clearly excessive. The point, of course, is that in order to make any appellate decision meaningful, whether it be on federal constitutional grounds or state law grounds, petitioner must be allowed to survive until its appeal has been resolved.

321 U.S. 158, 177, 178 (1944) (Jackson, J., concurring and dissenting on other grounds); *Watson* v. *Jones*, 80 U.S. (13 Wall) 679, 730 (1872). Accordingly, numerous federal and state courts—including those in California—have rejected claims such as respondent's when made by former members against their Church. *See Baumgartner* v. *First Church of Christ, Scientist*, 141 Ill. App.3d 898, 490 N.E. 2d 1319 (1st Dist. 1986) *cert. denied*, —— U.S. ——, 107 S.Ct. 317 (1986); *Meroni* v. *Holy Spirit Ass'n.*, 119 A.D. 2d 200, 506 N.Y.Supp. 2d 174 (2d Dept. 1986) *appeal filed* (October 2, 1986); *Molko* v. *Holy Spirit Ass'n.*, 179 Cal. App.3d 450, 224 Cal. Rptr. 817 (1st Dist. 1986) *review granted* —— Cal.3d ——, 228 Cal. Rptr. 159 (1986);[15] *Lewis* v. *Holy Spirit Ass'n.*, 589 F.Supp. 10, 12 (D. Mass. 1983); *Christofferson* v. *Church of Scientology of Portland*, 57 Or.App. 203, 644 P.2d 577 (Or.App. 1982) *petition denied*, 293 Or. 456, 650 P.2d 928 (1982) *cert. denied*, 459 U.S. 1206, 1227 (1983). And it is, of course, because states such as California recognize that trial courts do err and that trial court adjudication carries a "risk of erroneous deprivation", *see Matthews* v. *Eldridge*, 424 U.S. 319, 335 (1976), that the state provides access to the appellate courts to provide for review of errors such as occurred upon the trial of this case.

Moreover, the Due Process violation is further exacerbated by the inclusion in the judgment of twenty-five mil-

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[15] The decision in *Molko* rests squarely on the principle that the First Amendment bars judicial imposition of tort liability for the alleged psychological effects of voluntary participation in peaceful religious practices. If the Supreme Court of California affirms that decision, the state appellate courts will presumably reverse the judgment in this case. If the Supreme Court of California reverses the *Molko* decision, then there is a reasonable probability in light of the various decisions cited in the text, that this Court would grant *certiorari* to review either that case and/or this case to resolve the conflict and settle the important constitutional issue involved.

lion dollars, or five times the compensatory damages, as punitive damages. This Court has recognized that punitive damages by definition "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence." *International Brotherhood of Electrical Workers* v. *Foust*, 442 U.S. 42, 48 (1979) quoting *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). Equally, this Court has recognized and warned against the danger that punitive damages may be a means of punishing minority views, *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974), and described as "important issues which, in an appropriate setting must be resolved" claims "that a $3.5 million punitive damage award is impermissible under the Excessive Fines Clause of the Eighth Amendment; and that lack of sufficient standards governing punitive damage awards . . . violates the Due Process Clause of the Fourteenth Amendment." *Aetna Life Insurance Co.* v. *Lavoie*, —— U.S. ——, 106 S.Ct. 1580, 1589 (1986). *See also Jeffries, A Comment On The Constitutionality of Punitive Damages*, 72 Va. L. Rev. 139, 147-158 (1986).

This Court has prohibited awards of punitive damages where their imposition is inconsistent with important social and public policy interests. *See International Brotherhood of Electrical Workers* v. *Foust*, 442 U.S. 42 (1979) (no punitive damages against labor unions in unfair representation action); *Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247 (1981) (no punitive damages against municipalities in Section 1983 actions). Equally, if not more so, the assessment of punitive damages against a religious organization for providing peaceful and voluntary religious practices creates a danger of the selective destruction of the religious organization and of the underlying values which protect *all* religions. *See e.g., International Brotherhood*

of Electrical Workers v. *Foust, supra*, 442 U.S. at 50 n.14; *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). The imposition of such damages, particularly in as shockingly large an amount as here, runs afoul of the Establishment and Free Exercise Clauses, necessarily involves excessive state entanglement with religion and severely chills religious practices and expression.

3. The application of the California statutory scheme to petitioner and the denial of a stay pending appeal or a meaningful reduction in the bond requirements also violate the Equal Protection Clause. As the decisions of this Court hold, "[d]ue process and equal protection principles converge in the Court's analysis in these cases." *Evitts* v. *Lucey, supra*, 469 U.S. at 403 quoting *Bearden* v. *Georgia*, 461 U.S. 660, 665 (1983). Here, the bonding requirement creates two classes without any rational basis for doing so. Appellants who have the wherewithal to post bonds of twice the judgment or to obtain a surety bond of one and one-half times the judgment can obtain a stay of enforcement pending appeal; appellants such as petitioner for whom it is financially impossible to meet either alternative are denied a stay. The consequences of the distinction between the two classes are dramatically illustrated here: petitioner's right to a meaningful appeal and indeed its very existence is immediately threatened because of its financial inability to post a bond. Were it able to meet the bonding requirements, it would not be threatened and could pursue its appeal confident that the merits of the appeal would be resolved and that it would still exist at the time of appellate decision. Instead, unlike a defendant with greater assets, the appeal will become a meaningless exercise.

It is difficult to imagine any rational basis for the distinction as applied in this case; it is also difficult to claim

that a bond of twice or one and one-half times the judgment is needed for the protection of any state interest. In *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982) a majority of this Court found a statute, non-discriminatory on its face, unconstitutional as applied under the Equal Protection Clause because it terminated "potentially meritorious claims" without a "rational" state interest. 455 U.S. at 439-40, 442 (Blackman, J., concurring); *id.* at 443-44 (Powell, J., concurring). In *Lindsey* v. *Normet*, 405 U.S. 56 (1972) this Court found unconstitutional on its face, under the Equal Protection Clause, a double bond requirement applicable only to a certain class of cases stating that it did not question reasonable procedural rules to safeguard litigated property or to discourage patently insubstantial appeals, "if these rules are reasonably tailored to achieve these ends and if they are uniformly and non-discriminatorily applied." 405 U.S. at 78. The Court also observed that "the double-bond requirement heavily burdens the statutory right . . . to appeal." 405 U.S. at 77. *See also Patterson* v. *Warner*, 415 U.S. 303, 303-04 (1974) (provision requiring double bond as condition for appeal "appeared to present a significant issue, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment . . . .")

Here, the double bond or one and one-half bond requirement for staying execution pending appeal more than heavily burdens the statutory right to appeal—it makes the right futile for petitioner, which is financially unable to meet the requirements.[16]

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[16] The essence of petitioner's argument here is its inability to post any bond beyond that of its unpledged assets. However, it is not without significance that California's statutory double the judgment bond is unusually high in state appellate systems. When this requirement, as here, is predicated upon an award of punitive damages which, by definition, are not needed to compensate the respondent, the equal protection argument is even stronger.

CONCLUSION

The petition for certiorari should be granted for the reasons stated above.

Dated: December 31, 1986

Respectfully submitted,

/s/ LEONARD B. BOUDIN

LEONARD B. BOUDIN
Counsel of Record

ERIC M. LIEBERMAN
EDWARD COPELAND
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Counsel for Petitioner

APPENDICES

APPENDIX A

Statutes Involved

The relevant provisions of the California Code of Civil Procedure are as follows:

§ 902. Appeal by party aggrieved; appellant and respondent defined

Any party aggrieved may appeal in the cases prescribed in this title. A party appealing is known as an appellant, and an adverse party as a respondent.

§ 904.1. Superior courts; appealable judgments and orders.

An appeal may be taken from a superior court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, other than as provided in subdivisions (h) and (i), (2) a judgment of contempt which is made final and conclusive by Section 1222, (3) a judgment on appeal from a municipal court or a justice court or a small claims court, or (4) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition upon petition for an extraordinary writ.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(d) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(e) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(f) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(g) From an order appointing a receiver.

(h) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(i) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(j) From an order or decree made appealable by the provisions of the Probate Code.

§ 917.1. Appeal from money judgment; undertaking to stay enforcement; amount; payment by surety; subrogation

(a) The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order is for money or directs the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action, unless an undertaking is given.

(b) The undertaking shall be on condition that if the judgment or order or any part of it is affirmed or the appeal is withdrawn or dismissed, the party ordered to pay shall pay the amount of the judgment or order, or the part of it as to which the judgment or order is affirmed, as entered after the receipt of the remittitur, together with any interest which may have accrued pending the appeal and entry of the remittitur, and costs which may be awarded against the appellant on appeal. This section shall not apply in cases where the money to be paid is in the actual or constructive custody of the court; and such cases shall be governed, instead, by the provisions of Section 917.2. The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order. The liability on the undertaking may be enforced if the party ordered to pay does not make the payment within 30 days after the filing of the remittitur from the reviewing court.

(c) If a surety on the undertaking pays the judgment, either with or without action, after the judgment is affirmed, the surety is substituted to the rights of the creditor and is entitled to control, enforce, and satisfy the judgment, in all respects as if the surety had recovered the judgment.

§ 923. Power of reviewing court to stay proceedings, issue writ of supersedeas, suspend or modify injunction, etc., not limited by chapter provisions

The provisions of this chapter shall not limit the power of a reviewing court or of a judge thereof to

stay proceedings during the pendency of an appeal or to issue a writ of supersedeas or to suspend or modify an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction.

APPENDIX B

Order Dated November 3, 1986

SUPREME COURT OF THE UNITED STATES

No. A-271

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Applicant,

v.

LARRY WOLLERSHEIM

ON CONSIDERATION of the application for stay presented to Justice O'Connor and by her referred to the Court,

IT IS ORDERED by this Court that the said application be, and the same is hereby, granted and the order entered by Justice O'Connor on October 8, 1986, is continued pending the timely filing and disposition of a petition for writ of certiorari.

November 3, 1986

Justice Brennan took no part in the consideration or decision of this order.

A true copy JOSEPH F. SPANIOL, JR.
Test:

Clerk of the Supreme Court of the United States

By /s/ FRANCIS J. LORSON
Chief Deputy

APPENDIX C

Order Dated October 8, 1986

SUPREME COURT OF THE UNITED STATES

No. A-271

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Applicant,

v.

LARRY WOLLERSHEIM

ORDER

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the execution and enforcement of the judgment of the Superior Court of California, County of Los Angeles, case No. C 332 027, entered July 22, 1986, is stayed, and the order of the Superior Court of California, County of Los Angeles, case No. C 332 027, entered August 4, 1986, is continued pending receipt of a response to the application due on or before Tuesday, October 14, 1986 at noon and further order of the undersigned or of the Court.

/s/ Sandra D. O'Connor
Associate Justice of the Supreme
Court of the United States

Dated this 8th
day of October, 1986.

A true copy JOSEPH F. SPANIOL, JR.
Test:

Clerk of the Supreme Court of the United States

By /s/ FRANCIS J. LORSON
Chief Deputy

APPENDIX D

Order

(Filed October 6, 1986)

2/7 No. B023193

IN THE

SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

WOLLERSHEIM

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA

BIRD, C.J. DID NOT PARTICIPATE.

Application for stay and petition for review DENIED.

Mosk, J. and Grodin, J., are of the opinion that the petition for stay should be granted as to punitive damages only.

/s/ BROUSSARD
Acting Chief Justice

APPENDIX E

Order

(Filed October 3, 1986)

No. 2/7 BO23193

IN THE

SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

WOLLERSHEIM,

Respondent

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Appellant

BIRD, C.J. DID NOT PARTICIPATE.

Pending final determination of the petition for review filed herein, the stay heretofore ordered on August 4, 1986, in Wollersheim v. Church of Scientology, by the Los Angeles County Superior Court, in case No. C332 027, is hereby continued in full force and effect.

/s/ BROUSSARD
Acting Chief Justice

APPENDIX F

Order

(Filed October 1, 1986)

IN THE

COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION SEVEN

No. B023193

(Super. Ct. No. C332027)

(Ronald E. Swearinger, Judge)

LARRY WOLLERSHEIM,

Plaintiff and Respondent,

v.

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Defendant and Appellant.

ORDER

THE COURT*:

The court has read and considered the petition for writ of supersedeas filed herein September 29, 1986. The petition is denied.

/s/ LILLIE /s/ THOMPSON /s/ JOHNSON

*LILLIE, P.J., THOMPSON, J., JOHNSON, J.

APPENDIX G

Notice of Appeal

(Filed September 29, 1986)

EARLE C. COOLEY
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Attorneys for Defendant, CHURCH OF SCIENTOLOGY OF CALIFORNIA

SUPERIOR COURT
OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

No: C 332 027

LARRY WOLLERSHEIM,

Plaintiff,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Defendant.

NOTICE OF APPEAL

Church of Scientology of California, Defendant, appeals to the Court of Appeal of the State of California, Second

Appendix G—Notice of Appeal

District, from the Judgment entered on July 22, 1986, (hereinafter "Judgment") and from the Order entered on September 18, 1986 by Los Angeles County Superior Court Judge Ronald E. Swearinger denying Defendant's Motion for Judgment Notwithstanding the Verdict. The appeal from the Judgment seeks review of the verdict, the judgment and all intermediate rulings, proceedings, orders and decisions which involve the merits or necessarily affect the Judgment or which substantially affect the rights of the Defendant, including but not limited to the Order entered on September 18, 1986 by Los Angeles County Superior Court Judge Ronald E. Swearinger denying Defendant's Motion for New Trial.

Notice of entry of such Judgment was served on the Defendant by counsel for Plaintiff on July 24, 1986. Attorney for Plaintiff is Charles B. O'Reilly, 816 S. Figueroa Street, Los Angeles, California 90017.

DATED: September 29, 1986

Respectfully submitted,

PETERSON & BRYNAN
By: /s/ JOHN G. PETERSON
JOHN G. PETERSON
Attorneys for Defendant Church of Scientology of California

APPENDIX H

Order Dated August 4, 1986

(Filed August 4, 1986)

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
No: C 332 027

LARRY WOLLERSHEIM,

Plaintiff,

VS.

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
A Corporation; et al.,

Defendant.

Pursuant to CCP § 918, the Court hereby stays enforcement of the judgment in this case until October 3, 1986, provided that during the period of said stay, the assets reflected in the financial statement admitted into evidence during the testimony of Lynn Farny will not be disbursed, disposed of, expended, transferred or conveyed without prior approval of this Court, except in the ordinary course of business. As to whether or not any expenditure is not in the ordinary course of business, defendant shall submit to this Court in camera, prior to making any expenditure by way of settlement of legal actions pending against the defendant, a statement, under penalty of perjury, as to

the amount claimed to be necessary to effect such settlement and shall not make such disbursement without leave of this Court, which leave shall not be unreasonably withheld.

DATED: August 4, 1986

RONALD E. SWEARINGER, Judge
HONORABLE RONALD SWEARINGER

APPENDIX I

Minute Order Dated July 22, 1986

Date JULY 22, 1986

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF LOS ANGELES

HONORABLE RONALD E. SWEARINGER Judge

Y. JOHNSON Deputy Sheriff

A. CARRASCO Court Attendant

C. BUTER Deputy Clerk

J. EKERLING/C. LAMPKIN, Reporter

(Parties and counsel checked if present)

C 332 027

LARRY WOLLERSHEIM

VS

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Counsel for Plaintiff
CHARLES O REILLY√
LETA SCHLOSSER√

Counsel for Defendant
EARLE COOLEY√

NATURE OF PROCEEDINGS:

CIVIL TRIAL (J) FRAUD/AO

Jury deliberations continued from July 21, 1986, resumes with all jurors present as heretofore.

Appendix I—Minute Order Dated July 22, 1986

At 9:10 AM the jury resumes deliberating.

At 11:45AM the jury recesses for lunch.

At 1:30 PM the jury resumes deliberating.

OUT OF THE PRESENCE JURY:

Court and counsel confer re jury question. The Court advises counsel that the jurors are requesting that their jury notebooks and voir dire questionaires be returned to them. The jury request is discussed between the Court and counsel and the Court rules as follows:

Counsel are directed to return their set of the jury questionnaires to the Clerk to be placed in the court file.

Further, the Clerk and Court Attendant (Antoinette Carrasco) are directed to destroy all of the juror notebooks by taking them all to the Exhibit Room and by using the paper thrasher.

With Court and counsel present at 3:10 PM the jury enters the court room with the following verdict:

TITLE OF COURT AND CAUSE

We, the jury in the above entitled action, find with regard to Intentional Infliction of Emotional Distress did the plaintiff, Lawrence Dominick Wollersheim, discover or should he have discovered the facts which he alleges constituted Intentional Infliction of Emotional Distress before July 28, 1979/?

YES OR NO ×
(Please Check One)

Dated: July 22, 1986

Andre A. Anderson
Foreman

Appendix I—Minute Order Dated July 22, 1986

TITLE OF COURT AND CAUSE

We, the jury in the above entitled action, find for the plaintiff, LAWRENCE DOMINICK WOLLERSHEIM, and against the Defendant, CHURCH OF SCIENTOLOGY OF CALIFORNIA as follows:

(CHECK APPOPRIATE BOX)

A) On the Third Cause of Action (Intentional Infliction of Emotional Distress) X

B) On the Fourth Cause of Action (Negligent Infliction of Emotional Distress) X ;

We assess compensatory damages in the sum of $5,000,000.00
(Fill In Amount)

We assess punitive damages as to the Third Cause of Action (Intentional Infliction of Emotional Distress) in the sum of $25,000,000.00;
(Fill In Amount)

We do not assess punitive damages as to the Third Cause of Action (Intentional Infliction of Emotional Distress) ---------- .

Dated: July 22, 1986 Andre A. Anderson
Foreman

The jury is polled. All jurors answer "Yes" to all issues of the verdict. The Clerk records the verdict.

The jury is thanked and excused.

The Court makes the following orders:

Regarding the juror notebooks all 73 will be destroyed in the paper thrasher. (The following is a break down of the juror notebooks)

Appendix I—Minute Order Dated July 22, 1986

Juror	Number Books
#1	5
#2	6
#3	5
#4	6
#5	2
#6	2
#7	4
#8	6
#9	4
#10	5
#11	6
#12	6
Alternate 1	2
Alternate 2	6
Alternate 3	4
Alternate 4	4

Further, the Court makes an order sealing the following:

1) Plaintiff's exhibits 70 through 79 as described on the exhibit receipt and as listed in the minute order of March 12, 1986.

2) The Pre-Clear files of the plaintiff are ordered sealed until further order of the Court.

3) The copy of the Deposition of Edward Walters is again ordered resealed until further order of the Court.

The Verdicts, the Judgment on the Verdict and the instructions, Given, Refused and Withdrawn are filed.

Minutes Entered
7-22-86
County Clerk

APPENDIX J

Excerpt From October 21, 1985 Transcript of Proceedings

Excerpt From October 21, 1985 Transcript of Proceedings in Wollersheim v. Church of Scientology of California, No. C332 027, at 204-05

(Super. Ct. Cal.)

THE COURT: Let me tell you what I plan to do anyway. Why don't you have a seat and I will tell you what I plan to do.

The Founding Church and other cases tell us that while belief is protected, acts or action may not be. And that contention is made in a number of cases. It is mentioned in the Founding Church opinion. We are not starting here from scratch.

We talked at some length last week about the fact that it is a given in this case right now because of decisions made before this trial commenced. Scientology is a religion.

And it is also a fact that auditing is a central activity or function in the religion. That is discussed in the Founding Church case.

I know that one of the concerns of the plaintiff, for example, is the cost that is imposed upon adherence of the Church for auditing. But that is mentioned in the Founding Church case.

That point is made and that did not deter the United States Court of Appeal for the District of Columbia from finding that auditing is a central practice of Scientology.

Appendix J—Excerpt From October 21, 1985 Transcript of Proceeding

What I propose to do—in fact, what I am going to do—and I don't want to hear any more arguments about this. There comes a time when I have heard enough, and I have read enough and I am just going to rule and we are going to proceed—is to grant the defendants' motion as to items 1, 2, 3. Those portions of the motion are granted.

* * *

APPENDIX K

Excerpt From June 14, 1985 Transcript of Proceedings

Excerpt From June 14, 1985 Transcript of Proceeding in Wollersheim v. Church of Scientology of California, No. C332 027 at 4

(Super. Ct. Cal.)

THE COURT:

• • •

My tenative [sic] views with respect to the summary judgment and summary adjudication of issues are these: I think I should grant number five. Scientology is a religion. I think the moving papers sufficiently establish that. I have no separate statement presented by the opposition as required by Section 437c. And as to the extent that factual matters are invoked, as I believe they are, with respect to that issue, any controverting should be by a separate statement with the appropriate citations as required by the code. That's not done.

The supporting documents for the proposition that Scientology is a religion do more than make a prima facie case; they make a strong case. And I am satisfied, based on the posture of what I have, and I am referring particularly to the declaration of Mr. Flinn, that number five should be granted. My tenative [sic] view is that all the others should be denied.

• • •

APPENDIX L

Minute Order Dated June 14, 1985

DATE June 14, 1985

HONORABLE Norman L. Epstein

C. Lee Deputy Clerk
C. Bell Reporter

(Parties and counsel checked if present)

C 332 027

Larry Wollersheim

vs

Church of Scientology of
California, et al.,

Counsel for Plaintiff
Leta St. Clair Schlosser√
Charles B. O'Reilly√
Steve Wilson√

Counsel for Defendant
Taylor, Roth & Bush
Robert Kropp Jr.√
Harrison W Hertzberg√
Eric M Lieberman√

NATURE OF PROCEEDINGS.

Motion of defendant Church of Scientology of California for summary Judgment or,
alternatively, for summary adjudication of issues

1) Court rules on evidentiary objections as reflected in the reporter's notes.

Appendix L—Minute Order Dated June 14, 1985

2) The motion is timely

3) Court denies summary judgment. Of the summary adjudication of issues, Court grants #5 and denies all others. Each of the others asks the Court to rule that conduct of defendant *as alleged* is not actionable. This requires that moving party negative these claims—ie. show that the factual statements are untrue—or establish that a basis of relief is not stated even if they are factually correct. Moving party has failed to do this. No declaration is presented by anyone who claims to have been an auditor or supervisor of an auditor who treated with plaintiff. It is not proven that those who did treat with plaintiff did so out of religious conviction. If those persons acted *as alleged*, their conduct is actionable.

4) Considering the proximity of a trial date, the running of the 5-year period, and the nature of the motion (it could have been brought at almost any point in the litigation and the absence of the statutory showing, ruling should not be deferred under 437c (h). Bifurcation should be decided by the trial court.

Counsel for responding parties are to prepare the orders and submit with approval as to form.

The Court orders the County Clerk to safeguard the file in a single place pending formal order for sequestering. Court will mail Intended Decision to counsel re sequestering for comments, prior to making formal order.

MINUTES ENTERED

June 14, 1985

COUNTY CLERK